

OGC 80-01933

7 March 1980

OGC Has Reviewed

MEMORANDUM FOR: Deputy to the DCI for Resource Management
Deputy to the DCI for Collection Tasking
Deputy Director for Operations
Deputy Director for National Foreign
Assessment
Deputy Director for Administration
Deputy Director for Science and Technology
Legislative Counsel
Comptroller
Inspector General
Director of Public Affairs
Director of Equal Employment Opportunity
Director of Personnel Policy, Planning
and Management

STATINTL

FROM :
Chief, Administrative Law Division

SUBJECT : Reporting and Recordkeeping Requirements
Imposed Upon Members of the Public by CIA

REFERENCE : 45 Federal Register 2586 (January 11, 1980),
"Controlling Paperwork Burdens on the
Public, Proposed Rulemaking"

1. In the reference cited above, the Office of Management and Budget ("OMB") has issued a Notice of Proposed Rulemaking to regulate the reporting and recordkeeping requirements imposed upon the public by agencies and departments of the Federal Government. As presently drafted, portions of the proposed rule would apply to CIA. Because of the short deadline imposed upon agency and department responses, this Office took the initiative to request an exemption from the requirements of the proposed rule. Having done this I am sure you understand that it is imperative that this Office be furnished whatever forms, described below, that the Agency may use so that we may defend against a possible negative response from OMB.

2. The portion of the proposed regulation that would impose regulatory requirements upon CIA is intended to implement the Federal Reports Act of 1942, as amended. Under that Act, OMB is authorized to review and approve the manner in which certain information is collected from the general public by a Federal agency. OMB has required that

Federal agencies submit their information collection plans and forms for review. Under the Act, a Federal agency is not permitted to collect information from members of the general public through the use of written report forms, application forms, schedules, questionnaires or other, similar methods, unless those forms have been reviewed and approved by OMB. To my knowledge none of this Agency's forms have even been submitted to or approved by OMB.

3. Before this Office can respond to the Notice, the forms that are used by CIA to solicit information from members of the general public must be identified. I ask each directorate or independent office which uses forms with the characteristics described below to advise me by identifying the particular form or forms involved and by forwarding copies to me.

- a. Use Outside the United States. The form must be used to solicit information from organizations located within the United States or from United States citizens wherever located.
- b. Use Outside CIA and the Federal Government. The form must be used to solicit information or opinions from individuals or organizations which are not associated with the Federal Government or the CIA. If the form is used to obtain information from another Federal agency or department or if the form is used to collect information from a current Federal employee, it is not regulated by OMB. Prospective contractors and their employees, as well as consultants, independent contractors, applicants or other persons of interest (including operational interest) to this Agency on a witting or unwitting basis, as well as former employees or retired Agency employees are, however, deemed to be members of the general public and, accordingly, copies of any forms used with regard to them should be sent to me.
- c. Frequency of Use of the Form. The form must be used to request, solicit or elicit information from at least ten persons per year.
- d. Type of Information Solicited. If the form is used to acquire facts from or about or to determine the opinion of the respondent, it is subject to OMB review. OMB review is required for forms that an agency requires to be completed as well as for forms for which completion by a member of the general public is completely voluntary.

- e. Manner of Solicitation. Included are forms that are completed by the respondent as well as forms that are completed by the Agency during the course of an interview or telephone conversation. The critical factor is that information is being solicited by a Federal agency from a member of the general public, not who fills out the form or who gathers it on behalf of the Federal agency.
- f. Collection by a Contractor. Any forms used by an Agency contractor which are required by the contractor's contract to be completed are also subject to OMB review, provided these forms satisfy the other characteristics noted in this memorandum. Excluded are forms used by a contractor if the collection of such information is neither required by its contract with the Agency nor is any representation of government sponsorship made with regard to the information collected.

4. Even if the form falls within the criteria set forth above, it is not subject to OMB regulation if it falls into any of the exemptions listed below:

- information solicited for a simple identification for the purpose of executing an affidavit or other sworn document;
- information solicited in order to allow the Agency to respond to request submitted under the Privacy Act or the Freedom of Information Act.
- information solicited in order to provide an acknowledgment of receipt, change of address, or to complete any other label used by the Agency to correspond with the member of the general public; and
- information solicited in the form of technical drawings or specifications submitted as part of the government procurement process.

Also excluded are documents which request no substantive information from members of the general public--such as documents that require only a signature and listing of the signer's address. This, for example, would include receipts for classified documents, etc., or the form used by CIA receptionists for persons visiting our installations.

5. In forwarding the form to me I would appreciate your including a brief description of the use of each form and an estimate of the frequency of use. This requirement extends to all forms classified or unclassified, CIA unique or standard Government forms. I ask that components which use no forms that are potentially subject to OMB review so advise me in writing. I also ask that responses to this memorandum be sent to this Office no later than 21 March 1980. Any later responses will make this Office's consultation with OMB much more difficult.

6. If you have any questions regarding this memorandum, please do not hesitate to call me or the attorney handling this matter for me.

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